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No. 87-108

In the Supreme Court of the United States

OCTOBER TERM, 1987

HARVEY FURGATCH, PETITIONER

v.

FEDERAL ELECTION COMMISSION, RESPONDENT

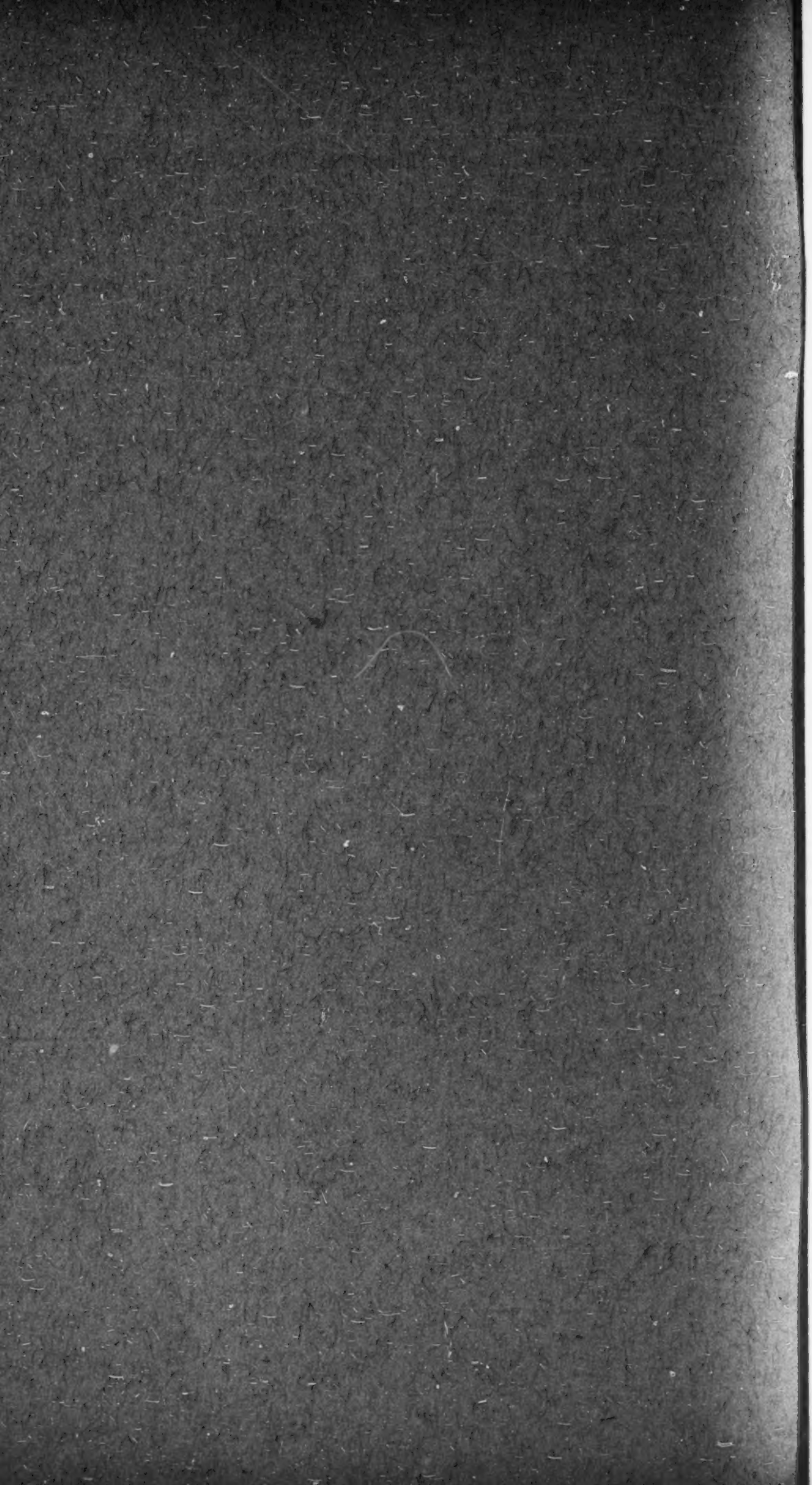
ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR RESPONDENT IN OPPOSITION

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AUGUST 21, 1987



QUESTIONS PRESENTED

1. Whether the court of appeals properly found that an advertisement exhorting readers not to let Jimmy Carter succeed in obtaining "four more years" expressly advocated Carter's defeat in the 1980 presidential election three days later, so that it was subject to the disclosure requirements of 2 U.S.C. §§ 434 (c) and 441d.

2. Whether the court of appeals properly concluded that 2 U.S.C. §§ 434(c) and 441d are not unconstitutional.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-17a) is published at 807 F.2d 857 (9th Cir. 1987). The order of the court of appeals denying a petition for rehearing and suggestion for rehearing *en banc* (Pet. App. 18a) and the order of the district court (Pet. App. 19a-21a) are unpublished.

JURISDICTION

The judgment of the court of appeals was entered on January 9, 1987, and on April 23, 1987 that court denied Mr. Furgatch's petition for rehearing and suggestion for rehearing *en banc*. The Petition for

a *Writ of Certiorari* was filed on July 20, 1987. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTES INVOLVED

The relevant statutory provisions are reprinted in the Appendix to this brief.

STATEMENT OF THE CASE

A. Background

The Federal Election Campaign Act, as amended, 2 U.S.C. §§ 431-455 ("the Act") requires that all independent "communications expressly advocating the election or defeat of a clearly identified candidate" must "clearly state the name of the person who paid for the communication and state that the communication is not authorized by any candidate or candidate's committee." 2 U.S.C. § 441d(a)(3). The Act also requires that anyone making "independent expenditures" (defined in 2 U.S.C. § 431(17) as an expenditure "expressly advocating the election or defeat of a clearly identified candidate") in excess of an aggregate of $250 in a calendar year must file a report with the Commission for public availability. 2 U.S.C. § 434(c).

One week prior to the 1980 general presidential election, Harvey Furgatch placed a full page advertisement in the *New York Times*. Captioned "Don't let him do it," the advertisement accused Jimmy Carter of "degrading the electoral process and lessening the prestige of the office" in a variety of ways. It then warned: "If he succeeds the country will be burdened with four more years of incoherencies, ineptness, and illusion, as he leaves a legacy of low-level campaigning. **Don't let him do it.**" (Pet. App. 22a).

Three days before the general election, Harvey Furgatch placed the same advertisement in the *Boston Globe*. Unlike the first advertisement, which stated that it was paid for by Harvey Furgatch and was "[n]ot authorized by any candidate," the second advertisement omitted the disclaimer that it was "not authorized by any candidate." The two advertisements cost Mr. Furgatch a total of approximately $25,000. (Pet. App. 3a).

Upon the foregoing facts, the Commission found probable cause to believe that Mr. Furgatch had violated 2 U.S.C. § 434(c) by failing to report his expenditures for these advertisements, and violated 2 U.S.C. § 441d by failing to include the disclaimer in the *Boston Globe* advertisement. When conciliation efforts proved unsuccessful, the Commission authorized the filing of this civil action pursuant to 2 U.S.C. § 437g(a)(6)(A).

B. The Decision Of The Court Below

Finding that, on the facts presented, "[r]easonable minds could not dispute that Furgatch's advertisement is urging readers to vote against Jimmy Carter" (Pet. App. 16a), the court of appeals concluded that "Furgatch was obligated to file the statement and make the disclosures required for any 'independent expenditure' under the Federal Election Campaign Act" (Pet. App. 17a).[1] Explicitly acknowledging its obligation to "apply sections 434(c)

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[1] The district court had dismissed the case, finding that "although it is a very close call, the political advertisements placed by defendant Furgatch do not, as required by 2 U.S.C. §§ 434(c) and 441d(a), constitute 'communications expressly advocating the election or defeat of a clearly identified candidate'" (Pet. App. 19a).

and [441d] consistently with the constitutional requirements set out in *Buckley* [v. *Valeo*, 424 U.S. 1 (1976)]" (Pet. App. 7a), the court of appeals carefully measured the particular facts of this case against this Court's explanation of the "express advocacy" standard. The court observed that the determination in each case of whether a particular communication contains "express advocacy" is primarily a factual one (Pet. App. 9a), and concluded that the English language is too flexible a tool of communication to permit reducing this inquiry to a rigid formula that would be determinative in all cases (Pet. App. 12a-14a). Nevertheless, the court emphasized that the statute was narrowly limited to communications containing language "susceptible of no other reasonable interpretation but as an exhortation to vote for or against a specific candidate. . . . [I]f any reasonable alternative reading of speech can be suggested, it cannot be express advocacy subject to the Act's disclosure requirements" (Pet. App. 14a-15a).

The court found that the language of Mr. Furgatch's advertisement left "no doubt that the ad asks the public to vote against Carter" (Pet. App. 15a).

> The words we focus on are "don't let him." They are simple and direct. "Don't let him" is a command. The words "expressly advocate" action of some kind. If the action that Furgatch is urging the public to take is a rejection of Carter at the polls, this advertisement is covered by the Campaign Act.
>
> . . . .
>
> Reasonable minds could not dispute that Furgatch's advertisement is urging readers to vote against Jimmy Carter. This was the only action open to those who would not "let him do it." The

> reader could not sue President Carter for his indelicate remarks, or arrest him for his transgressions. If Furgatch had been seeking impeachment, or some form of judicial or administrative action against Carter, his plea would have been to a different audience, in a different forum. If Jimmy Carter was degrading his office, as Furgatch claimed, the audience to whom the ad was directed must vote him out of that office. If Jimmy Carter was attempting to buy the election, or to win it by "hid[ing] his own record, or lack of it," as Furgatch suggested, the only way to not let him do it was to give the election to someone else. . . .
>
> . . . Timing the appearance of the advertisement less than a week before the election left no doubt of the action proposed.

(Pet. App. 16a-17a).

Finally, the court summarily rejected Mr. Furgatch's constitutional challenges to the statute on the ground "that the constitutionality of the provisions at issue was reviewed in *Buckley*, and the standard set forth by the Supreme Court in that case was incorporated in the Act in its present form" (Pet. App. 17a).[2]

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[2] Several months after the district court's decision in this case, Mr. Furgatch filed a separate suit seeking, pursuant to 2 U.S.C. § 437h, certification to the *en banc* court of appeals of the same constitutional arguments raised as affirmative defenses in this case. *Furgatch v. FEC*, No. 85-0720-N(M) (S.D. Cal. filed March 6, 1985). A different district court judge dismissed the second case for lack of case or controversy because of the outstanding judgment in this case that Mr. Furgatch's activities were not subject to the statute he was challenging. When the court of appeals reversed the decision in this case, it also vacated the dismissal in the second case

On April 23, 1987, the panel unanimously rejected Mr. Furgatch's petition for rehearing, and no judge of the Ninth Circuit requested a vote on his suggestion for rehearing *en banc* (Pet. App. 18a). Mr. Furgatch filed the Petition for *Writ of Certiorari* on July 20, 1987.[3]

ARGUMENT

The decision below raises no significant issues of statutory construction or constitutional law that have not been dealt with by this Court before. This Court upheld the constitutionality of the predecessor of the reporting and disclosure requirements at issue here in *Buckley v. Valeo*, 424 U.S. 1, 80-81 (1976), and just last Term, in *FEC v. Massachusetts Citizens for Life, Inc.*, 107 S. Ct. 616, 623 (1986), the Court reaffirmed that the "express advocacy" standard contained in those provisions satisfies the First Amend-

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which had been based upon that decision. In its order remanding the second case, however, the court noted that in this case it had already upheld the constitutionality of the Act as applied to Mr. Furgatch. Nevertheless, Mr. Furgatch again petitioned the district court to certify his constitutional challenges to the *en banc* court of appeals, and the district court denied that motion during a hearing on April 6, 1987. On April 30, 1987, Mr. Furgatch filed a petition with the *en banc* court of appeals, requesting a writ of mandamus ordering the district court to certify his constitutional challenges to the *en banc* court. *Furgatch v. USDC-CAS*, No. 87-7180 CIVATT (9th Cir. filed April 30, 1987). To date, no action has been taken on Mr. Furgatch's petition, and the Commission has not been requested to respond to it. *See* Fed. R. App. P. 21(b).

[3] Mr. Furgatch did not request a stay of mandate from the court of appeals and during a hearing on July 13, 1987, the district court denied Mr. Furgatch's motion to suspend further proceedings on remand pending resolution of his *certiorari* petition.

ment concerns relied upon by Petitioner. The court of appeals' assessment of Mr. Furgatch's advertisement under that standard turns upon the particular facts of this case, and thus does not necessarily indicate how courts will assess other communications in other circumstances. Such a fact-dependent determination does not warrant plenary review by this Court, particularly since this Court discussed the proper application of the express advocacy standard only last Term in *FEC v. Massachusetts Citizens for Life, Inc.*, 107 S. Ct. at 623, and applied it in a manner consistent with that of the court of appeals in this case.

1. The court of appeals' finding that Mr. Furgatch's advertisements expressly advocated the defeat of Jimmy Carter in the imminent presidential election is amply supported by the record in this case. Indeed, the advertisements discussed nothing other than Jimmy Carter's reelection campaign. They accused Carter of labelling his opponents in the primary and general elections as unpatriotic, of attempting to use federal funds to buy special interest votes, of campaigning in a manner that "cultivate[s] the fears, not the hopes, of the voting public," and of attempting "to hide his own record, or lack of it." These campaign tactics, the advertisements asserted, were "degrading the electoral process and lessening the prestige of the office." (Pet. App. 22a).

Petitioner asserts (Pet. 15) that mere criticism of how an election campaign is run does not amount to "express advocacy" under the Act. But that argument is inapposite here, for Mr. Furgatch's advertisements did not merely criticize Jimmy Carter's reelection campaign. Instead, they went on to warn that if Carter "succeeds, the country will be burdened with four more years of incoherencies, ineptness, and

illusion," an unmistakable reference to Carter's election to another presidential term. This warning was followed immediately by the explicit exhortation, in bold print three lines high, **"Don't let him do it."** Plainly, the only way a reader could stop Carter from "succeed[ing]" in "burden[ing]" the country with "four more years" of his assertedly inadequate leadership was to defeat Carter in his bid for reelection.[4]

Petitioner argues (Pet. 17) that the court of appeals' decision conflicts with "the established rules of English grammar," but neither in his Petition to this Court nor in the court below has he ever specified any such "established rule" that conflicts with the result reached by the court of appeals. Petitioner argues (Pet. 17 n.14) that the advertisements actually called only for exposure of Carter's record. But far from being required by rules of grammar, this argument can only be made by ignoring the advertisement's explicit statement that if Carter "succeeds" in what it

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[4] These facts demonstrate why the decision in *FEC v. Central Long Island Tax Reform Immediately Committee ("CLITRIM")*, 616 F.2d 45 (2d Cir. 1980) (en banc), does not conflict with the decision here, as alleged by Petitioner (Pet. 16-17). The leaflet at issue in *CLITRIM* advocated lower taxes and listed a local congressman's votes on a certain tax bill, but it contained "no reference anywhere . . . to the congressman's party, to whether he is running for re-election, to the existence of an election or the act of voting in any election; nor is there anything approaching an unambiguous statement in favor of or against the election of Congressman Ambro." 616 F.2d at 53. The only exhortation in the leaflet in that case called for communication with the congressman on the issue of taxes, not action against him. Far from rejecting the Second Circuit's conclusion that this leaflet did not contain express advocacy of an election result, the court below explicitly agreed that *CLITRIM* involved only "issue-oriented speech" (Pet. App. 17a).

asks the reader to stop him from doing, "the country will be burdened with four more years" of Carter's leadership. While Carter's alleged hiding of his record is certainly one of the criticized campaign tactics that the advertisement accuses the reader of permitting Carter to pursue successfully, the cumulative success of all those criticized campaign tactics in obtaining "four more years" of Carter's presidency is what the advertisement exhorts the reader to prevent. This is confirmed by the advertisement's publication only three days before the election, when voting against Carter was the only action left to defeat Carter's reelection bid. As this Court explained in *FEC v. Massachusetts Citizens for Life, Inc.*, 107 S. Ct. at 623, "[t]he fact that this message is marginally less direct than 'Vote for Smith' does not change its essential nature." [5]

Petitioner makes no other arguments why the result reached in this case was erroneous. Rather, he takes issue with a number of the lower court's general statements regarding law and policy, taken out of their context in a lengthy and discursive opinion. It is well settled, however, that "[t]his Court . . . reviews judgments, not statements in opinions." *FCC v. Pacifica Foundation*, 438 U.S. 726, 734 (1978),

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[5] Petitioner argues (Pet. 17-18) that *FEC v. Massachusetts Citizens for Life, Inc.* is inapposite here because that case involved whether the supported candidates were clearly identified and "the statute's requirement that a candidate be 'clearly identified' invokes a different standard" than whether advocacy is express. But in *Buckley v. Valeo*, 424 U.S. at 43, this Court equated the two, stating that express advocacy requires "explicit words of advocacy of election or defeat of a candidate, much as the definition of 'clearly identified' . . . requires . . . an explicit and unambiguous reference to the candidate . . . ."

quoting Black v. Cutter Laboratories, 351 U.S. 292, 297 (1956). Since, as we have shown, the Ninth Circuit's finding that Mr. Furgatch's advertisements contained express advocacy is entirely consistent with this Court's precedents, Petitioner's disagreements with the Ninth Circuit's general discussion of express advocacy provide no basis for granting plenary review.[6] Petitioner's similar disagreements with state-

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[6] Many of Petitioner's arguments simply misconstrue the court of appeals' views. For example, Petitioner asserts (Pet. 13) that " 'intent' appears to be the controlling and guiding factor in the opinion of the Court of Appeals," although the court of appeals dismissed this factor with the observation that "our attempts to fathom [Mr. Furgatch's] mental state would distract us unnecessarily from the speech itself" (Pet. App. 13a). Petitioner is also misguided in his attempt (Pet. 9-10) to equate the discussion of express advocacy in this case with the broader "clear advocacy" standard adopted by the court of appeals in *Buckley v. Valeo*, 519 F.2d 821, 853 (D.C. Cir. 1975), which was narrowed to express advocacy by this Court on appeal, 424 U.S. at 41-44. Initially, since Petitioner never made this argument below, he is foreclosed from advancing it for the first time in this Court. *G.D. Searle & Co. v. Cohn*, 455 U.S. 404, 412 n.7 (1982); *EEOC v. FLRA*, 106 S. Ct. 1678, 1681 (1986). In any event, this Court rejected the court of appeals' "clear advocacy" standard in *Buckley* because it would have permitted speech designed only to advance issues associated with a candidate to be construed as promoting the candidate's election, thus putting the speaker "wholly at the mercy of the varied understanding of his hearers and consequently of whatever inference may be drawn as to his intent and meaning." *Buckley v. Valeo*, 424 U.S. at 43, *quoting Thomas v. Collins*, 323 U.S. 516, 535 (1945). The court of appeals in this case, by contrast, applied the narrower "express advocacy" standard in a manner that forecloses the possibility of varying inferences by limiting the reach of the statute to communications "susceptible of no other reasonable interpretation but as an exhortation to vote for or against a

ments and phrases taken out of context from the briefs filed below by the Commission's appellate attorneys (Pet. 4-5, 7-8, 17-18, 20) provide even less of a basis for granting review. Accordingly, these arguments need not be specifically addressed here.

Petitioner's attack (Pet. 16-19) upon the Commission's motives in bringing this case is completely unsupported by the evidence he cites.[7] The Commission's loss of two cases[8] involving the express advocacy issue in the early aftermath of *Buckley v. Valeo*, 424 U.S. 1 (1976), hardly demonstrates the sort of concerted agency campaign to broaden the statute described by Petitioner. To the contrary, the Commission accepted both of those decisions without even an appeal, and has successfully endeavored to comply with them since. Indeed, there has been only one other reported court case involving this issue in this decade, and this Court resolved the express advocacy issue in that case in the Commission's favor last Term. *FEC v. Massachusetts Citizens for Life, Inc.*, 107 S. Ct. at 623. Petitioner's allegations pro-

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specific candidate" (Pet. App. 14a). This restatement of the express advocacy test avoids the pitfalls identified in *Buckley* and *Thomas* by ensuring that a communication plausibly subject to "varied understanding[s]" is excluded from the statute's reach.

[7] As an agency of the federal government, the Commission is entitled to a strong "presumption of honesty and integrity." *Withrow v. Larkin*, 421 U.S. 35, 47 (1975). *See also Schweiker v. McClure*, 456 U.S. 188, 195 (1982).

[8] *FEC v. CLITRIM*, 616 F.2d 45 (2d Cir. 1980) (en banc); *FEC v. American Federation of State, County and Municipal Employees*, 471 F. Supp. 315 (D.D.C. 1979).

vide no reason for this Court to revisit this issue so soon.[9]

2. Petitioner also challenges the constitutionality of the reporting and disclosure provisions he violated on the basis of the First and Fifth Amendments (Pet. 21-23). Petitioner's First Amendment challenge is frivolous, for this Court upheld the constitutionality of the predecessors of these provisions, as applied to express advocacy, in *Buckley v. Valeo*, 424 U.S. at 80-81, and Congress specifically limited the coverage of the current provisions to express advocacy "to be consistent with the discussion of independent political expenditures which was included in *Buckley v. Valeo*." H.R. Conf. Rep. No. 1057, 94th Cong., 2d Sess. 38 (1976).

Petitioner argues that the reporting requirements violate his Fifth Amendment right to equal protection because the institutional press is exempted from

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[9] Petitioner asserts (Pet. 21) that this case discloses "at least four ways to construe [express advocacy]." As this brief demonstrates, the Commission has not disagreed with the court of appeals' application of the statute, and the Commission's briefs below were entirely consistent with the court of appeals' decision. Moreover, until now Petitioner has always insisted that he agreed fully with the district court's decision in this case. That reduces Petitioner's four approaches to two. But even the district court and the court of appeals were not really very far apart in their views of this case: both courts agreed that Mr. Furgatch's advertisements were so near the limit of the statute's coverage that the case was a "very close call" (Pet. App. 8a, *agreeing with* Pet. App. 19a). Thus, the "confusion of views among the professionals of the bench and bar" described by Petitioner (Pet. 21) is in reality only a narrowly differing assessment of the facts of this case.

these provisions by 2 U.S.C. § 431(9)(B)(i).[10] This Court has repeatedly rejected such equal protection arguments, finding that with respect to campaign finance legislation it is appropriate to defer to the "judgment by Congress that . . . entities having differing structures and purposes . . . may require different forms of regulation in order to protect the integrity of the electoral process." *California Medical Ass'n v. FEC*, 453 U.S. 182, 201 (1981). *Accord, FEC v. National Right to Work Committee*, 459 U.S. 197, 210 (1982).[11] In particular, this Court noted in *Buckley* that special protections for the news media, like section 431(9)(B)(i), are "the rule, not the exception."

> Our statute books are replete with laws providing financial assistance to the exercise of free speech, such as aid to public broadcasting and other forms of educational media . . . and preferential postal rates and antitrust exemptions for newspapers.

424 U.S. at 93 n.127.

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[10] As Petitioner notes (Pet. 7, 23), he is requesting this Court to consider this contention in the first instance, since the court below did not address it beyond observing that this Court had previously upheld the constitutionality of these provisions (Pet. App. 17a). Petitioner's petition for rehearing to that court did not suggest further elaboration on this issue was necessary. *See* Fed. R. App. P. 40(a) ("The petition shall state with particularity the points of law or fact which . . . the court has overlooked . . . .").

[11] *See also Athens Lumber Co. v. FEC*, 718 F.2d 363 (11th Cir. 1983) (en banc) (summarily rejecting, *inter alia*, equal protection challenge to 2 U.S.C. § 431(9)(B)(i) which was set out in *Athens Lumber Co. v. FEC*, 689 F.2d 1006, 1015-16 (11th Cir. 1983), *appeal dismissed, cert. denied*, 465 U.S. 1092 (1984).

The institutional news media covered by section 431(9)(B)(i) are not, in fact, comparable to an individual purchasing an advertisement for political advocacy. Unlike an individual purchasing an advertisement, when a newspaper publishes an editorial the newspaper's financial sponsorship of the editorial is well understood, so that disclosure of the allocable operating costs is less crucial to the statutory goal of disclosing the constituencies of the candidate. *See Buckley v. Valeo*, 424 U.S. at 81. On the other hand, requiring a newspaper to report the portion of its daily operating costs allocable to editorial comments on federal elections would be far more burdensome than requiring an individual to report a discrete payment of an amount certain to purchase an advertisement.

In any event, to the extent the Act treats Mr. Furgatch differently than the institutional press, the disparity tips decidedly in his favor. Most if not all of the institutional press are corporations which, as the Court noted in *California Medical Ass'n v. FEC*, 453 U.S. at 200-01, are subject to other, more stringent restrictions on their political activities than the reporting requirements of which Mr. Furgatch complains. Indeed, in *FEC v. Massachusetts Citizens for Life, Inc.*, 107 S. Ct. at 625-26, this Court explained at length how the Act's regulation of corporations is much more burdensome than the reporting requirements in 2 U.S.C. § 434. For example, while Mr. Furgatch is free to purchase advertising expressing his political choices in any newspaper in the country, so long as he reports his expenditures, a corporate newspaper is only permitted to run such an editorial in its own newspaper for distribution to its usual purchasers, and is entirely prohibited by

2 U.S.C. § 441b from expending its money to publicize its electoral views elsewhere. *See FEC v. Massachusets Citizens for Life, Inc.*, 107 S. Ct. at 624.[12] Thus, as in *California Medical Ass'n v. FEC*, 453 U.S. at 200 (emphasis in original), Petitioner's "claim of unfair treatment ignores the plain fact that the statute as a whole imposes far *fewer* restrictions on individuals and unincorporated associations than it does on corporations and unions."

CONCLUSION

The petition for a *writ of certiorari* should be denied.

Respectfully submitted,

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[12] "[T]he First Amendment interests implicated by disclosure requirements are substantially weaker than those at stake when speech is actually suppressed . . . ." *Zauderer v. Office of Disciplinary Counsel*, 471 U.S. 626, 652 n.14 (1985).

APPENDIX

APPENDIX

The First Amendment to the Constitution of the United States provides:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

The Fifth Amendment to the Constitution of the United States provides:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

2 U.S.C. § 431. Definitions

When used in this Act:

(9) (A) The term "expenditure" includes—

(i) any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value, made by any person for the purpose of influencing any election for Federal office; and

(ii) a written contract, promise, or agreement to make an expenditure.

(B) The term "expenditure" does not include—

(i) any news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication, unless such facilities are owned or controlled by any political party, political committee, or candidate;

* * *

(17) The term "independent expenditure" means an expenditure by a person expressly advocating the election or defeat of a clearly identified candidate which is made without cooperation or consultation with any candidate, or any authorized committee or agent of such candidate, and which is not made in concert with, or at the request or suggestion of, any candidate, or any authorized committee or agent of such candidate.

* * *

§ 434. Reporting requirements

(c) *Statements by other than political committees; filing; contents; indices of expenditures.*

(1) Every person (other than a political committee) who makes independent expenditures in an aggregate amount or value in excess of $250 during a calendar year shall file a statement containing the information required under subsection (b)(3)(A) of this section for all contributions received by such person.

(2) Statements required to be filed by this subsection shall be filed in accordance with sub-

section (a)(2) of this section, and shall include—

(A) the information required by subsection (b)(6)(B)(iii) of this section, indicating whether the independent expenditure is in support of, or in opposition to, the candidate involved;

(B) under penalty of perjury, a certification whether or not such independent expenditure is made in cooperation, consultation, or concert, with, or at the request or suggestion of, any candidate or any authorized committee or agent of such candidate; and

(C) the identification of each person who made a contribution in excess of $200 to the person filing such statement which was made for the purpose of furthering an independent expenditure.

Any independent expenditure (including those described in subsection (b)(6)(B)(iii) of ths [sic] section) aggregating $1,000 or more made after the 20th day, but more than 24 hours, before any election shall be reported within 24 hours after such independent expenditure is made. Such statement shall be filed with the Clerk, the Secretary, or the Commission and the Secretary of State and shall contain the information required by subsection (b)(6)(B)(iii) of this section indicating whether the independent expenditure is in support of, or in opposition to, the candidate involved.

* * *

§ 441d. Publication and distribution of statements and solicitations; charge for newspaper or magazine space

(a) Whenever any person makes an expenditure for the purpose of financing communications expressly advocating the election or defeat of a clearly identified candidate, or solicits any contribution through any broadcasting station, newspaper, magazine, outdoor advertising facility, direct mailing, or any other type of general public political advertising, such communication—

> (3) if not authorized by a candidate, an authorized political committee of a candidate, or its agents, shall clearly state the name of the person who paid for the communication and state that the communication is not authorized by any candidate or candidate's committee.

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